

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

BMO HARRIS BANK N.A.,

Plaintiff,

v.

No. 16-cv-0760 MV/SMV

**ALFREDO OROZCO and
ALFREDOS TRUCKING & BACKHOE SERVICE, INC.,**

Defendants.

MEMORANDUM OPINION AND ORDER

THIS MATTER is before the Court on the Magistrate Judge's Proposed Findings and Recommended Disposition [Doc. 20] ("PF&RD"), issued on January 24, 2017. In light of the default judgment entered in favor of Plaintiff, [Doc. 18], and on reference by the undersigned, [Doc. 19], the Honorable Stephan M. Vidmar, United States Magistrate Judge, recommended that the Court grant certain, specific relief, [Doc. 20]. No objections were filed, and the time for doing so has passed.

After entry of default, it remains for the court to consider whether the unchallenged facts constitute a legitimate basis for the entry of a judgment. *Purzel Video GmbH v. Martinez*, 13 F. Supp. 3d 1140, 1148 (D. Colo. 2014). Based on the facts alleged in Plaintiff's Complaint and Motion for Default Judgment (including its supporting memorandum and affidavits) [Docs. 1, 13–17], the Court finds, on de novo review, that:

This Court has subject matter and personal jurisdiction over this case and the parties.

Default and default judgment have been entered against Defendants. [Docs. 9, 18].

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that:

- (1) Judgment is hereby entered in favor of Plaintiff and against Orozco in the amount of \$41,835.06, plus reasonable attorneys' fees and costs in the amount of \$2,034.59,¹ for a total of \$43,869.65, plus interest at the per diem rate of \$19.97 from February 16, 2016, through the date of entry of this Order.
- (2) Judgment is hereby entered in favor of Plaintiff and against Alfredo's Trucking in the amount of \$266,303.76, plus reasonable attorneys' fees and costs in the amount of \$8,138.35,² for a total of \$274,442.11, plus interest at the per diem rate of \$116.75 from March 10, 2016, through the date of entry of this Order.
- (3) An Order of Possession is hereby entered against Alfredo's Trucking as follows:

A. Plaintiff is entitled to the immediate possession of the following:

<u>Year/Make/Model</u>	<u>Description</u>	<u>VIN</u>
2012 Galyean 130BBL	Trailer	1G9VT4023CH018137
2012 Galyean 130BBL	Trailer	1G9VT4025CH018141
2012 Industries Met Gri SA DE CV Vacuum Tank	Trailer	3A9SV4022CM216117

(collectively, the "Alfredo's Trucking Equipment").

B. Upon receipt of this order, Alfredo's Trucking and its agents and employees, including Orozco, must immediately: (i) disclose the location of the Alfredo's Trucking Equipment to Plaintiff, and (ii) deliver the Alfredo's Trucking Equipment to Plaintiff.

¹ This amount represents twenty percent (20%) of the total amount of attorneys' fees due.

² This amount represents eighty percent (80%) of the total amount of attorneys' fees due.

C. Except as specifically set forth herein, Alfredo's Trucking is hereby enjoined and restrained from taking any action concerning the Alfredo's Trucking Equipment, including, without limitation, the sale, transfer, or other disposition of the Alfredo's Trucking Equipment. In addition, Alfredo's Trucking is hereby enjoined and restrained from taking any action that would interfere in any way with Plaintiff's seizure of the Alfredo's Trucking Equipment.

(4) An Order of Possession is hereby entered against Orozco as follows:

A. Plaintiff is entitled to the immediate possession of the following:

<u>Year/Make/Model</u>	<u>Description</u>	<u>VIN</u>
2012 Galyean 130BBL	Trailer	1G9VT4023CH018140
2012 Galyean 130BBL	Trailer	1G9VT4024CH018299

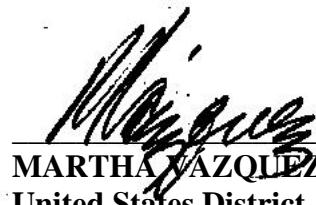
(collectively, the "Orozco Equipment").

B. Upon receipt of this order, Orozco and his agents and employees shall immediately:

(i) disclose the location of the Orozco Equipment to Plaintiff, and (ii) deliver the Orozco Equipment to Plaintiff.

C. Except as specifically set forth herein, Orozco is hereby enjoined and restrained from taking any action concerning the Orozco Equipment, including, without limitation, the sale, transfer, or other disposition of the Orozco Equipment. In addition, Orozco is hereby enjoined and restrained from taking any action that would interfere in any way with Plaintiff's seizure of the Orozco Equipment.

IT IS SO ORDERED.



MARTHA VAZQUEZ
United States District Judge